

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Brickell	Team: Team # 6	CCRB Case #: 201300648	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/05/2013 9:30 PM	Location of Incident: § 87(2)(b) and inside the 42nd Precinct stationhouse	Precinct: 42	18 Mo. SOL 7/5/2014	EO SOL 7/5/2014	
Date/Time CV Reported Sat, 01/26/2013 11:35 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 01/26/2013 11:35 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Felix Arana	15988	944249	042 PCT
2. POM Mauricio Thomas	26957	945466	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sergio Auza	03120	941373	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mauricio Thomas	Abuse: PO Mauricio Thomas stopped § 87(2)(b) outside of § 87(2)(b)	
B.POM Felix Arana	Abuse: PO Felix Arana threatened § 87(2)(b) with the use of force outside of § 87(2)(b)	
C.POM Mauricio Thomas	Abuse: PO Mauricio Thomas strip-searched § 87(2)(b) inside the 42nd Precinct stationhouse.	
D.POM Mauricio Thomas	Force: PO Mauricio Thomas used physical force against § 87(2)(b) inside the 42nd Precinct stationhouse.	

## Case Summary

On January 26, 2013, § 87(2)(b) filed this complaint via the call processing system at the Civilian Complaint Review Board (CCRB) on behalf of himself. On January 5, 2013, at approximately 9:30 p.m., § 87(2)(b) was arrested by police officers from the 42<sup>nd</sup> Precinct in the lobby of § 87(2)(b) in the Bronx. The following allegations resulted:

**Allegation A – Abuse of Authority: PO Mauricio Thomas stopped § 87(2)(b) outside of**

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

**Allegation B – Abuse of Authority: PO Felix Arana threatened § 87(2)(b) with the use of force outside of § 87(2)(b) and inside of the 42<sup>nd</sup> Precinct stationhouse.**

**Allegation C – Abuse of Authority: PO Mauricio Thomas strip-searched § 87(2)(b) inside the 42<sup>nd</sup> Precinct stationhouse.**

**Allegation D – Force: PO Mauricio Thomas used physical force against § 87(2)(b) inside the 42<sup>nd</sup> Precinct stationhouse.**

§ 87(2)(b), § 87(2)(g)

This case was originally assigned to Inv. Kimani Richardson and was reassigned to Inv. Frank Mesa on February 6, 2013, upon Inv. Richardson's departure from the agency. The case was then reassigned to the undersigned on August 20, 2013, upon Inv. Mesa's departure from the agency.

## Results of Investigation

### Civilian Statement

**Complainant/Victim:** § 87(2)(b)

- *At the time of the incident, § 87(2)(b) was § 87(2)(b) old. He is a black male, stands 5'4" tall, weighs 150 pounds, and has black hair and brown eyes.*

**CCRB Statement:**

On February 15, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 6A - B). His statements were consistent and are summarized below.

On January 5, 2013, at approximately 9:10 p.m., § 87(2)(b) left his friend § 87(2)(b) apartment, § 87(2)(b) located at § 87(2)(b) in the Bronx to go to a bodega down the street § 87(2)(b) did not know Thomas' last name). He returned to Thomas' apartment with a black, plastic bag containing potato chips and two unopened bottles of Corona beer. He initially stated that he had one beer. He stayed there for ten minutes. § 87(2)(b) said that he drank one of the Coronas and ate the chips before leaving Thomas' apartment, but that the second bottle was closed inside of the black plastic bag, along with the chips, that he was carrying.

At approximately 9:30 p.m. § 87(2)(b) again exited the building alone. He was approached by three uniformed officers. An officer, described by § 87(2)(b) as a Hispanic male, approximately 27 years old, 5'8", 230 pounds, with a heavy set body type, and wearing glasses, and in uniform, asked § 87(2)(b) where he was coming from and then for identification. The investigation determined that it was PO Thomas that asked § 87(2)(b) for his identification. § 87(2)(b) gave PO Thomas his identification and he asked § 87(2)(b) if he had anything on him, which he said he did not. He stated that at no point did he throw anything on the ground.

PO Thomas handcuffed § 87(2)(b). After handcuffing § 87(2)(b) PO Thomas placed § 87(2)(b) on the ground, face-down and searched his pockets. § 87(2)(b)'s face did not make contact with the ground. § 87(2)(b) had money, identification, mobile phone, phone charger and a computer flash drive on him. The money was in his inside coat pocket, his identification, phone, charger and flash drive were in his front pants pockets. § 87(2)(b) stated that he did not have any marijuana on him.

After searching § 87(2)(b)'s pockets, PO Thomas and a second officer, described by § 87(2)(b) as a Hispanic male, approximately 27 years old, 5'8" tall, weighing 230 pounds, wearing glasses and in uniform, identified via the investigation as PO Sergio Auza from the 42<sup>nd</sup> Precinct, picked § 87(2)(b) up off the ground and placed him in the back seat of a marked NYPD sedan. A third officer, described by § 87(2)(b) as Hispanic male, approximately 34 years old, 6'2", with a chubby build and a mustache and in uniform, identified via the investigation as PO Felix Arana from the 42<sup>nd</sup> Precinct, was seated next to him. PO Arana told § 87(2)(b) that he had better not move or he was going to punch him in the face and "fuck him up."

Upon arrival at the 42<sup>nd</sup> Precinct, PO Thomas removed the handcuffs from § 87(2)(b) and took him into the bathroom and told him to strip. § 87(2)(b) took off all of his clothes and PO Thomas ordered him to bend over, squat and shake out his pants. § 87(2)(b) complied with all the orders. PO Arana came into the bathroom with blue plastic gloves that PO Thomas and PO Arana put on. PO Thomas grabbed § 87(2)(b)'s right arm and twisted his fingers back and asked § 87(2)(b) if he was lying to him. § 87(2)(b) pushed himself toward the ground to lessen the pressure that PO Thomas was putting on his fingers, and PO Thomas and PO Arana held § 87(2)(b) down on the floor of the bathroom. PO Arana told § 87(2)(b) that PO Thomas was not playing around and that PO Thomas was going to break § 87(2)(b)'s arm. § 87(2)(b) was ordered to put his clothes back on. § 87(2)(b) got dressed and was put in a cell before being taken to Central Booking.

#### **NYPD Statements:**

##### **Subject Officer: PO FELIX ARANA**

- *On the date of the incident PO Arana was § 87(2)(b).*
- *On January 5, 2013, PO Arana worked from 3:00 p.m. to 11:35 p.m. He was assigned to Conditions with PO Mauricio Thomas and PO Sergio Auza. They were dressed in uniform and assigned to a marked vehicle (# 3215).*

#### **Memo Book (encl. 10A - C)**

At approximately 9:30 p.m. § 87(2)(b) was arrested inside of § 87(2)(b).

### **OLBS Statements (encl. 14A - B)**

At the time and place of occurrence the defendant, § 87(2)(b) was observed littering on a public sidewalk. The defendant ran from officers as he was approached. In the course of the arrest, the defendant flailed his arms and pushed off of officers to avoid being handcuffed. The defendant had an active warrant and was found to be in possession of large quantity of marijuana.

### **Criminal Court Complaint (encl. 14C - D)**

As per the Criminal Court Complaint, PO Arana testified that he observed § 87(2)(b) holding a Corona bottle in a paper bag. He asked § 87(2)(b) for identification to issue a summons, and § 87(2)(b) stated that he did not have identification. § 87(2)(b) threw the bottle to the ground and resisted arrest by flailing his arms and pushing PO Arana and PO Thomas. PO Arana also indicated that he observed a clear bag containing a large quantity of marijuana in § 87(2)(b)'s groin area.

### **CCRB Testimony**

On May 9, 2013, PO Arana was interviewed at the CCRB (encl. 15A - B). His statements are summarized below with any major discrepancies noted below.

On January 5, 2013, at approximately 9:30 p.m., PO Arana, PO Thomas and PO Auza were entering the building at § 87(2)(b) in the Bronx, a safe halls building, to conduct a vertical patrol. PO Arana observed § 87(2)(b) coming out of the building with an open container of beer in his hand. He did not clarify why § 87(2)(b) was not charged with an open container violation. PO Arana did not recall who asked § 87(2)(b) for his identification. In his Criminal Court Complaint testimony PO Arana stated that he asked § 87(2)(b) for his identification. § 87(2)(b) dropped the bottle and it shattered. § 87(2)(b) turned around and ran back into the building. PO Arana, PO Thomas, and PO Auza chased § 87(2)(b) inside the building and caught him in front of the elevator in the lobby.

§ 87(2)(b) resisted arrest by pushing the officers and throwing his arms. PO Arana told § 87(2)(b) to stop resisting and give him his arms, but § 87(2)(b) refused. PO Thomas took § 87(2)(b) to the floor by pulling his arms to gain control of him and placed him in handcuffs. The officers handcuffed § 87(2)(b) and transported him to the 42<sup>nd</sup> Precinct stationhouse for arrest. PO Arana did not recall any conversation taking place in the vehicle. PO Arana did not recall saying, "If you move I'm going to punch you in the face and fuck you up," nor did he recall hearing PO Thomas or PO Auza make this statement. He did not recall where he was in the vehicle other than he was not driving.

At the stationhouse, PO Arana took down § 87(2)(b)'s pedigree information and PO Thomas took § 87(2)(b) to the holding cell and ordered him to remove his belt and shoelaces. § 87(2)(b) removed his belt, and PO Thomas told PO Arana that he noticed a plastic bag in the front of § 87(2)(b)'s pants. PO Thomas asked PO Arana to assist him and PO Arana went into the cell and asked § 87(2)(b) to give him what he had in his pants. When § 87(2)(b) refused, PO Arana and PO Thomas escorted § 87(2)(b) into the bathroom in the holding cell area. PO Arana could see the bag in § 87(2)(b)'s waistband, told him to pull the bag out of his pants and § 87(2)(b) refused. PO Arana reached into § 87(2)(b)'s waistband and retrieved a zip-lock bag that contained approximately 20 smaller bags of marijuana. PO Arana did not recall if the bag was found in § 87(2)(b)'s pants or his underwear. PO Arana did not pull § 87(2)(b)'s pants down.

PO Arana said that § 87(2)(b) was not strip-searched. PO Arana did not notify the desk sergeant that he was taking § 87(2)(b) into the bathroom. He did not strip-search § 87(2)(b) because he

did not believe he had any other contraband. PO Arana denied that he or PO Thomas pulled § 87(2)(b)'s fingers back, twisted his arm or held him down on the bathroom floor or threatened to break his arm.

**Subject Officer: PO MAURICIO THOMAS**

- *On the date of the incident PO Thomas was § 87(2)(b) yes.*
- *On January 5, 2013, PO Thomas worked from 6:00 p.m. to 2:35 a.m. on January 6, 2013. He was assigned to Conditions with PO Felix Arana and PO Sergio Auza. They were dressed in uniform and assigned to a marked vehicle (#3215).*

**Memo Book (encl. 17A - B)**

At approximately 9:30 p.m., § 87(2)(b) was arrested in front of § 87(2)(b)

**CCRB Testimony**

On May 9, 2013, PO Thomas was interviewed at the CCRB (encl. 18A - B). His statement was consistent with PO Arana's, and any significant discrepancies are noted below.

At approximately 9:30 p.m., PO Thomas saw § 87(2)(b) coming out of the building at § 87(2)(b) with an open Corona beer bottle in his hand. PO Thomas approached § 87(2)(b) and asked him for identification. § 87(2)(b) dropped the bottle, causing it to shatter, and ran back into the lobby of § 87(2)(b). § 87(2)(b) was resisting arrest by lying face-down on the floor and keeping his hands under his body and moving his arms to avoid being handcuffed. PO Thomas, with the help of PO Arana and PO Auza gained control of § 87(2)(b)'s arms and handcuffed him and transported him in their vehicle to the stationhouse along with PO Auza and PO Arana. PO Thomas recalled that PO Auza was the driver, however, he did not recall where he was positioned in the RMP.

PO Thomas placed § 87(2)(b) in the holding cell and instructed him to remove his shoelaces and belt. The zipper of § 87(2)(b)'s pants was down and PO Thomas observed a plastic bag sticking out of the zipper of § 87(2)(b)'s pants and smelled marijuana on § 87(2)(b)'s person. PO Thomas and PO Arana escorted § 87(2)(b) to the bathroom to remove the marijuana. PO Thomas did not pull § 87(2)(b)'s pants down or instruct § 87(2)(b) to remove any article of clothing. PO Arana reached into § 87(2)(b)'s waistband and retrieved a zip-lock bag that contained a marijuana.

PO Thomas denied that he bent § 87(2)(b)'s fingers back, twisted his arm, or threatened to break § 87(2)(b)'s arm. He did not hear PO Arana threaten § 87(2)(b). PO Thomas said that he brought § 87(2)(b) to the bathroom because there were women in the holding cell and they wanted § 87(2)(b) to have privacy, but did not specify why he needed privacy. According to PO Thomas, PO Auza was not present in the bathroom during the search of § 87(2)(b).

**Witness Officer: PO SERGIO AUZA**

- *PO Auza was § 87(2)(b).*
- *On January 5, 2013, PO Auza worked from 6:00 p.m. to 2:35 a.m. on January 6, 2013. He was assigned to Conditions, was partnered with PO Thomas and PO Arana and was in uniform.*

**Memo Book (encl. 20A - C):** At 9:45 p.m. PO Auza entered an omitted entry related to § 87(2)(b)'s arrest. At approximately 9:20 p.m., § 87(2)(b) was placed under arrest in front of § 87(2)(b).

**CCRB Statement:**

On September 12, 2013, PO Auza was interviewed at the CCRB (encl. 21A - B). His statement is consistent with PO Arana and PO Thomas' statements, with any discrepancies noted below.

PO Auza observed § 87(2)(b) in front of the apartment complex holding a glass beer bottle, although he could not tell if it was open. PO Auza, PO Thomas and PO Arana approached § 87(2)(b). When they were approximately 10 feet from § 87(2)(b) he tossed the bottle and ran into the lobby of § 87(2)(b). PO Auza did not say anything to § 87(2)(b) before he started running. PO Auza did not recall if PO Thomas or PO Arana said anything to § 87(2)(b) Thomas before he started running. PO Auza did not recall PO Thomas ask § 87(2)(b) for his identification.

PO Auza did not see who first reached § 87(2)(b) or who handcuffed him, but said that both PO Thomas and PO Arana apprehended § 87(2)(b) was resisting arrest by alternately flailing and tightening his arms, and PO Thomas and PO Arana pulled his arms behind his back to affect the arrest. PO Auza did not participate in the physical arrest, as he was watching a second person in the lobby to make sure that he did not interfere. PO Auza was no more than five feet from the arrest when it took place, and did not recall how long it took to restrain § 87(2)(b).

After § 87(2)(b) was apprehended, PO Thomas and PO Arana escorted him outside of the lobby to their vehicle, and PO Auza recovered the bottle that § 87(2)(b) threw. He confirmed that it was a beer bottle, and that the cap of the bottle was snapped back on and it was open. § 87(2)(b) was searched for contraband and was placed in the vehicle. PO Auza did not specifically recall the search of § 87(2)(b) before he was placed in the vehicle. PO Auza did not recall any conversation with § 87(2)(b) in the vehicle. He did not recall who was in the back with § 87(2)(b). He did not hear PO Arana say that they would punch him in the face and "fuck him up."

When they arrived at the stationhouse, PO Auza took § 87(2)(b) to the desk to fill out his pedigree information, conducted a secondary search in front of the desk, and removed a "substantial amount" of money from § 87(2)(b)'s pockets. He did not remember administering the search. He did not recover any marijuana from § 87(2)(b) as a result of the search. PO Auza counted the money for vouchering and filled out the pedigree information for § 87(2)(b). This was his last interaction with § 87(2)(b). He did not process § 87(2)(b)'s arrest and did not know who processed his arrest.

PO Auza did not recall the whereabouts of PO Thomas and PO Arana at the stationhouse. He did not recall any interactions between PO Thomas, PO Arana and § 87(2)(b) at the stationhouse. PO Auza had no knowledge of a strip-search being performed on § 87(2)(b) at the stationhouse. He did not recall any conversation with PO Thomas and PO Arana about a strip-search occurring or the recovery of marijuana resulting from a search of § 87(2)(b). PO Auza had no knowledge of any officer using physical force of any kind or striking § 87(2)(b) at the stationhouse.

**NYPD Documents**

There is no record of a strip-search having been conducted in the command log (encl. 25A - O). There is no record of any strip-search recorded in the OLBS worksheet (30 A - C).

### Arrest for Incident and Disposition

- On April 17, 2013, § 87(2)(b) pled guilty to 221.05, unlawful possession of marijuana, and received a \$200 fine (encl. 32II).

### Status of Civil Proceedings

- To date, no Notice of Claim has been filed with the NYC Comptroller's Office (encl. 33).

§ 87(2)(b)

§ 87(2)(b)

### Subject Officers CCRB History

- PO Felix Arana has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 1).
- PO Mauricio Thomas has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 2).

### Conclusion

#### Identification of Subject Officers

§ 87(2)(b) described the officer that strip-searched him, twisted his arm and bent his fingers back as a dark-skinned Hispanic male, approximately 28 years old, and 5'9" tall with a muscular build. This description fits most closely with PO Mauricio Thomas, who is a dark-skinned Hispanic male, 33 years old, 5'10" tall and weighs 220 pounds. PO Thomas acknowledged that he brought § 87(2)(b) into the bathroom to remove the bag from his pants, which corroborates § 87(2)(b)'s version of the events. Despite the fact that § 87(2)(b) gave a different description for the officer that stopped him, PO Thomas acknowledged that he stopped § 87(2)(b). Therefore, **Allegations A, C and D** are pleaded against PO Thomas.

§ 87(2)(b) described the officer that threatened to punch him in the face and told him that PO Thomas was going to break his arm as a Hispanic male, approximately 34 years old, 6'2" tall, with a chubby build and a mustache. This description most closely fits PO Felix Arana, who is a Hispanic male, 27 years old, stands 5'10" tall and weighs 235 pounds. Additionally, PO Arana acknowledged that PO Thomas brought § 87(2)(b) into the bathroom, and that he was there to assist, which corroborates § 87(2)(b)'s version of the events. Therefore, **Allegation B**, is pleaded against PO Arana.

### Investigative Findings and Recommendations

#### Allegation A – Abuse of Authority: PO Mauricio Thomas stopped § 87(2)(b)

It is undisputed that PO Thomas stopped § 87(2)(b).

§ 87(2)(b) alleged that he was approached by the officers while carrying a sealed bottle of Corona in a black, plastic bag, and that an officer asked where he was coming from and requested his identification, which he provided.

PO Thomas, PO Arana, and PO Auza testified that they observed § 87(2)(b) exit a clean halls building, holding a beer bottle and approached him. PO Arana and PO Thomas observed that the bottle was open, but PO Auza could not tell. Neither the Criminal Court Complaint nor the arrest report indicate that the bottle was open. PO Thomas then requested § 87(2)(b)'s identification and he allegedly dropped the container and ran. In both his CCRB testimony and Criminal Court Compliant testimony, PO Arana stated that they intended to issue a summons to § 87(2)(b) for the open container.

As per People v. De Bour, an officer must have reasonable suspicion that the person has committed a crime to initiate a stop (encl. 0A – M). Additionally, in People v. McKinley, it was determined that founded suspicion combined with flight is equivalent to reasonable suspicion (encl. 0N – P).

§ 87(2)(b) first stated that he was not carrying anything when he left the apartment, but later said that he was carrying a bottle of Corona. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

**Allegation B – Abuse of Authority: PO Felix Arana threatened § 87(2)(b) with the use of force outside of § 87(2)(b) and in the 42<sup>nd</sup> Precinct stationhouse.**

§ 87(2)(b) alleged that PO Arana threatened to punch him in the face and “fuck him up,” in the vehicle at the scene of the arrest. § 87(2)(b) alleged that PO Arana told § 87(2)(b) that PO Thomas was going to break his arm in the bathroom of the stationhouse.

PO Arana denied saying that if § 87(2)(b) moved he was going to punch him in the face and “fuck him up.” PO Auza did not hear PO Arana tell § 87(2)(b) that he was going to punch him in the face and “fuck him up.” PO Arana denied telling § 87(2)(b) that PO Thomas was going to break his arm. PO Thomas also denied hearing PO Arana tell § 87(2)(b) that he was going to break § 87(2)(b)'s arm.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

**Allegation C – Abuse of Authority: PO Mauricio Thomas strip-searched § 87(2)(b) inside the 42<sup>nd</sup> Precinct stationhouse.**

§ 87(2)(b) alleged that PO Thomas ordered him to strip, bend over, squat and shake out his pants.

PO Thomas denied that a strip-search was performed. PO Arana also denied that a strip-search was performed. PO Thomas stated that he did not order § 87(2)(b) to remove or pull down his



pants and did not remove or pull down § 87(2)(b)'s pants. § 87(2)(b)'s underwear was not exposed during the course of incident. Additionally, there was no entry in the command log, OLBS worksheet or memo book that indicated a strip-search was performed, which is standard operating procedure as per Patrol Guide section 208-05.

According to Patrol Guide section 208-05, any search in which an individual's undergarments or private areas are exposed or an individual's clothing is removed, lifted or pulled down to expose undergarments or private areas is considered a strip search (encl. 0Q - R).

§ 87(2)(b), § 87(2)(g)

**Allegation D – Force: PO Mauricio Thomas used physical force against § 87(2)(b) inside the 42<sup>nd</sup> Precinct stationhouse.**

§ 87(2)(b) alleged that PO Thomas twisted his arm, bent his fingers back and held him down on ground.

PO Thomas denied that he twisted § 87(2)(b)'s arm or bent his fingers back. PO Arana also denied that PO Thomas twisted § 87(2)(b)'s arm, bent his fingers back or held him down on the floor.

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date